

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAROLYNNE R. HARRIS, as Trustee of the  
EDITH HEINEMANN HARRIS TRUST (U/A  
June 10, 2003), a Washington trust,

Plaintiff,

v.

DAVID S. MUNDEL, as Trustee of the  
AUGUST B. MUNDEL and JOAN WEBB  
MUNDEL TRUST (U/A March 27, 1988),  
a New York Trust,

Defendant.

Case No. 2:17-cv-01107-RAJ

**ORDER ON DEFENDANT'S  
MOTION FOR ATTORNEYS'  
FEES AND COSTS**

**I. INTRODUCTION**

This matter comes before the Court on Defendant's motion for attorneys' fees. Dkt. # 19. The Court **GRANTS** Defendant's motion for fees and costs in the amount of \$34,849.55.

**II. BACKGROUND**

The action concerns the alleged failure of Defendant to pay principal and interest to Plaintiff's trust under two promissory notes. Dkt. # 1. The history of the parties' dispute,

1 including the prior litigation and judgment in New York Superior Court, is detailed in this  
2 Court's order granting Defendant's motion to dismiss and will not be repeated here. Dkt.  
3 # 16. Defendant, as the prevailing party in the dispute before this Court, now seeks  
4 attorney's fees. Dkt. # 19.

### 5 **III. DISCUSSION**

6 As an initial matter, Plaintiff disputes that Defendant is entitled to any award of  
7 attorneys' fees. Plaintiff claims that Defendant has consistently argued the promissory  
8 notes (the "EH Harris Notes") were never validly formed and thus not enforceable. Dkt. #  
9 25 at 2. Plaintiff also claims that Defendant argued that the EH Harris Notes were not  
10 governed by Washington law. *Id.* According to Plaintiff, it would then be unjust to award  
11 Defendant fees under RCW 4.84,330, which permits the prevailing party in an action on a  
12 contract or lease to recover fees where such contract or lease specifically provides that  
13 attorneys' fees and costs. *Id.* Defendant asserts that fees are required under RCW 4.84,330  
14 and that case law shows this is true even where a party has argued the contract was void or  
15 otherwise unenforceable. Dkt. # 26 at 2.

16 The EH Harris Notes contain a provision for all reasonable attorneys' fees and costs  
17 associated with collection of payment. Dkt. # 5 at 62, 64. Under RCW 4.84,330, attorneys'  
18 fees should be reciprocally awarded in situations where the other party would have been  
19 entitled to attorneys' fees had they prevailed. *See Kaintz v. PLG, Inc.*, 197 P.3d 710 (Wash.  
20 App. 2008) (discussing "mutuality of remedy"). This includes situations where a party  
21 defends a contract lawsuit by proving the absence of an enforceable agreement. *See In re*  
22 *Herzog Aluminum Inc. v. Gen. Am. Window Corp.*, 692 P.2d 867 (Wash. App. 1984); *see*  
23 *also Mt. Hood Bev. Co. v. Constellation Brands, Inc.*, 63 P.3d 779 (Wash. 2003). Given  
24 this Washington authority, the Court finds that Defendant's prior arguments regarding the  
25 enforceability of the EH Harris Notes does not preclude an award of attorneys' fees.

#### 26 **A. Lodestar Method**

27 The Court turns to the calculation of attorneys' fees. The proper way for the Court

1 to determine attorneys' fees and costs is by using the lodestar method. To calculate the  
2 lodestar amount, the Court multiplies the number of hours reasonably expended by the  
3 reasonable hourly rate. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,  
4 1295 n.2 (9th Cir. 1994); *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403,  
5 406 (9th Cir. 1990); *Bowers v. Transamerica Title Ins. Co.*, 100 Wash. 2d 581, 597 (1983).  
6 The hours reasonably expended must be spent on claims having a "common core of facts  
7 and related legal theories." *Martinez v. City of Tacoma*, 81 Wash. App. 228, 242–43  
8 (1996); *Webb v. Sloan*, 330 F.3d 1158, 1168-69 (9th Cir. 2003). The Court discounts hours  
9 spent on unsuccessful claims, overstaffing, duplicated or wasted effort, or otherwise  
10 unproductive time. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986),  
11 *opinion amended on denial of reh'g*, 808 F.2d 1373 (9th Cir. 1987); *Bowers*, 100 Wash.  
12 2d at 597, 600. The Court may adjust the lodestar calculation "up or down to reflect factors,  
13 such as the contingent nature of success in the lawsuit or the quality of legal representation,  
14 which have not already been taken into account in computing the 'lodestar' and which are  
15 shown to warrant the adjustment by the party proposing it." *Id.* at 594 (citing *Miles v.*  
16 *Sampson*, 675 F.2d 5, 8 (1st Cir. 1982)) (emphasis in original); *see also Chalmers*, 796  
17 F.2d at 1212.

18 **i. Reasonably Hourly Rate**

19 The established rate for billing clients may be a reasonable hourly rate, but it is not  
20 conclusive. *Bowers*, 100 Wash. 2d at 597. In addition to the established rate, the court  
21 may consider the level of skill required by the litigation, time limitations imposed on the  
22 litigation, the amount of the potential recovery, the attorney's reputation, and the  
23 undesirability of the case. *Id.*; *see also Chalmers*, 796 F.2d at 1210-11. "Affidavits of the  
24 plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and  
25 rate determinations in other cases, particularly those setting a rate for the plaintiffs'  
26 attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of*  
27 *Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The Court may also rely

1 on its own knowledge and familiarity with the legal market in setting a reasonable hourly  
2 rate. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir.2011).

3 Defendant's counsel, Fredrick A. Haist and Anthony Wisen, represent that their  
4 hourly rates are \$445.00 and \$460.00 dollars respectively. Dkt. # 19-1. Haist and Wisen,  
5 both of whom have over ten years of experience, declare their familiarity with prevailing  
6 rates in the Seattle area and that the hourly rates charged by their firm Davis Wright  
7 Tremaine (DWT) are customary and reasonable for the region. *Id.* Given the Court's  
8 familiarity with rates in the Seattle market, and the lack of contrary evidence put forth by  
9 Plaintiff, the Court finds the rates charged reasonable. *See Gates v. Deukmejian*, 987 F.2d  
10 1392, 1397–98 (9th Cir. 1992) (explaining that party opposing the fee application has  
11 burden of challenging the reasonableness of the hours charge or the facts asserted by the  
12 prevailing party). However, Defendant's counsel fails to provide evidence to support the  
13 \$230 rate charged by DWT's paralegal, Mr. Schattenkerk. As such, the Court will adjust  
14 the rate charged by Mr. Schattenkerk to \$150 per hour. *See, e.g., Washington Shoe Co. v.*  
15 *A-Z Sporting Goods, Inc.*, 2013 WL 4094697, at \*2 (W.D. Wash. Aug. 12, 2013) (noting  
16 that \$150 for an experienced paralegal is reasonable in Seattle area).

## 17 **ii. Reasonableness of the Hours**

18 The attorneys seeking fees must provide “reasonable documentation of the work  
19 performed” in order to allow the court to assess whether the number of hours expended  
20 was reasonable. *McGreevy v. Or. Mut. Ins. Co.*, 951 P.2d 798, 802 (Wash. App. 1998).  
21 The court will “exclude from the requested hours any wasteful or duplicative hours and  
22 any hours pertaining to unsuccessful theories or claims.” *Mahler v. Szucs*, 957 P.2d 632,  
23 651 (Wash. 1998), *overruled on other grounds by Matsyuk v. State Farm Fire & Cas. Co.*,  
24 272 P.3d 802 (Wash. 2012). Further, the Ninth Circuit has held it is reasonable for a district  
25 court to conclude that the party seeking attorney's fees fails to carry its burden of  
26 documenting the hours expended when that party engages in “block billing” because block  
27 billing makes it more difficult to determine how much time was spent on particular

activities. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).

The Court has reviewed Defendant's summary of time and finds that Defendant seeks compensation for some hours were not adequately documented, as well as for some hours that are redundant or excessive, and adjusts the award accordingly. *See, e.g., Bund v. Safeguard Properties*, 2017 WL 1613340, at \*3 (W.D. Wash. Apr. 28, 2017). A line item dated August 21, 2017, reads "draft outline of motion to dismiss," for 3.8 hours, which is the same entry for a line item dated September 13, 2017. Without a more detailed description, the Court is unable to ascertain whether this work is duplicative work performed. Therefore, the Court will deduct 3.8 hours as duplicative. Further, Defendant's counsel has provided the Court with some "block" time entries, which has left the Court unable to attribute specific time spent on a particular activity on certain dates. The Court will deduct from its award a September 28, 2017 time entry for 5.1 hours. The Court finds the remaining entries reasonable, as well as counsel voluntarily discounting \$7,330.00 from its fee request. *See* Dkt. # 19-1, ¶ 10.

Accordingly, the total amount of fees awarded is:

Haist: 55.7 hours x \$445 = \$24,786.50

Wisen: 36.8 hours x \$460 = \$16,928.00

Schattenkerk: 3.0 hours x \$150 = \$450.00

Defendant's deduction: (\$7,330.00)

**TOTAL: \$34,834.55**

#### **B. Lodestar Adjustment**

The Court finds that the time set forth above, less the reductions noted by the Court, reflects the reasonable time spent working on this action and does not find it necessary to make any lodestar adjustments.

#### **C. Costs**

From what the Court can ascertain, Defendant seeks \$15 in costs. The Court grants this request. Dkt. # 19-1, Ex. 3.

1 **IV. CONCLUSION**

2 For the reasons stated above, the Court **GRANTS** Defendant's motion for fees and  
3 costs in the amount of \$34,849.55.

4  
5 DATED this 20th day of March, 2019.

6   
7

8 The Honorable Richard A. Jones  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28